

## HR Weekly Podcast 1/30/08

Today is January 30, 2008, and welcome to the HR weekly Podcast from the State Office of Human Resources. This week's topic concerns the first expansion of the Family Medical Leave Act, or FMLA, since its enactment in 1993.

On January 28<sup>th</sup>, President Bush signed into law HR 4986, the National Defense Authorization Act, or NDAA, for Fiscal Year 2008. This law expands the FMLA in two ways.

First, Section 585 of the NDAA amends FMLA leave to allow "a spouse, son, daughter, parent, or next of kin" to take up to 26 workweeks of leave "to care for a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness." This "Caregiver Leave" provision is effective as of the date of the President's signing, and the United States Department of Labor, or DOL, is quickly preparing comprehensive guidelines for the changes.

Second, the NDAA allows an employee to take FMLA leave for "any qualifying exigency arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation." This "Active Duty Leave" provision of the NDAA is not effective until the Secretary of Labor issues final regulations defining "a qualifying exigency." Examples of a qualifying exigency may be overseas assignments, recalls to active duty, and troop mobilizations.

We also need to keep in mind that FMLA-type procedures, such as intermittent leave, and all other restrictions and obligations associated with FMLA are still applicable. The legislation also authorizes the substitution of paid leave for these new unpaid, FMLA-protected service leaves. It allows an employer to request a certification for service member family leave and authorizes the Secretary of Labor to define this process by regulations. Finally, it requires an employee to provide "reasonable and practicable" notice of leave that is foreseeable due to the qualifying exigency related to active duty.

Though the DOL and Congressional sponsors of the FMLA expansion recognize that employers will need time to comply with the changes, OHR suggests that agency HR personnel immediately notify their agency employees of the new leave changes. Also, until official guidelines are published, the DOL recommends employers act in good faith in providing leave under the new provisions.

Before the military family provisions were proposed and enacted, the DOL had generated a revised set of FMLA regulations which was a result of the public's responses to the DOL's December 2006 Request for Information on the FMLA. On January 24, 2008, the DOL sent FMLA rule changes to the federal Office of Management and Budget, or OMB, for review. The OMB has 90 days to review the proposed revisions, but changes may be released and published by mid-February. OHR will keep you updated once the changes are released to the public.

For additional information, please visit the DOL's website at [www.dol.gov](http://www.dol.gov). If you have any questions regarding any information in this podcast, please call your HR Consultant at 737-0900.

Thank you.

